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ANTHEM BLUE CROSS LIFE AND HEALTH  
7 INSURANCE COMPANY

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10  
11 NAMDY CONSULTING, INC.,

12 Plaintiff,  
13 vs.

14 ANTHEM BLUE CROSS LIFE AND  
HEALTH INSURANCE COMPANY  
and DOES 1-40,

15 Defendants.  
16

Case No. CV 18-3243

**NOTICE OF REMOVAL TO THE  
UNITED STATES DISTRICT COURT**

17  
18 **TO THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT**  
19 **OF CALIFORNIA, AND TO PLAINTIFFS AND THEIR ATTORNEYS OF**  
20 **RECORD:**

21 **PLEASE TAKE NOTICE** that Defendant, Anthem Blue Cross Life and  
22 Health Insurance Company (“Anthem”), contemporaneously with the filing of this  
23 Notice, is effecting the removal of the above referenced civil action, Case No.  
24 BC680021, from the Superior Court of the State of California, for the County of Los  
25 Angeles, to the United States District Court, for the Central District of California,  
26 pursuant to 28 U.S.C. §§1331, 1332 and 1441(b) on the basis that this Court has  
27 original subject matter jurisdiction (Federal Question) of this matter because it arises  
28 under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et.

1 seq. (“ERISA”). As set forth below, Anthem files this removal notice within the 30-  
2 day period required in 28 U.S.C § 1446(b)(3).

3 The removal is based on the following grounds:  
4

5 **1. NATURE OF THE CASE.**

6 1. Plaintiff NAMDY Consulting Inc. (“NAMDY”) filed a complaint  
7 against Anthem in the Superior Court of the County of Los Angeles, California, Case  
8 No. BC680021 on October 18, 2018. In the original Complaint, NAMDY alleged  
9 that it is a purported assignee of unnamed health care providers (“Physicians”) who  
10 allegedly provided medical services to patients enrolled in health care plans  
11 administered or insured by Anthem. NAMDY alleges that Anthem underpaid the  
12 Physicians for emergency services allegedly rendered to its enrollees by failing to  
13 reimburse the Physicians at the “usual, customary and reasonable rates,” which  
14 NAMDY contends is the Physicians’ billed charges.

15 2. The Complaint alleged state law claims for (1) recovery of payment for  
16 services rendered; (2) recovery on open book account (3) quantum meruit; (4)  
17 breach of implied contract; (5) declaratory relief; (6) negligence per se and (7)  
18 interference with prospective economic advantage. There were no allegations,  
19 however, that Anthem breached any of the patient enrollees’ health benefit plans, nor  
20 did NAMDY seek to enforce the terms of such contracts. The Complaint did not  
21 provide any details about the patient enrollees, the medical services allegedly  
22 rendered to them or the health plans in which they were enrolled.

23 3. On December 26, 2017, NAMDY voluntarily filed a First Amended  
24 Complaint (“FAC”), eliminating the cause of action for negligence per se. NAMDY  
25 again alleged that Anthem underpaid the Physicians for emergency services allegedly  
26 rendered to its enrollees by failing to reimburse the Physicians at the “usual,  
27 customary and reasonable rates,” i.e., the Physicians’ billed charges. Once again,  
28 there were no allegations that Anthem breached any of the patient enrollees’ health

1 benefit plans. Nor did NAMDY seek to enforce the terms of such plans.  
2 Additionally, the FAC did not provide any details about the patient enrollees, the  
3 medical services allegedly rendered to them or the health plans in which they were  
4 enrolled.

5 4. Pursuant to a stipulation and order, NAMDY filed its Second Amended  
6 Complaint ("SAC") on February 19, 2018.

7 5. In the SAC NAMDY once again alleges that it is the assignee of the  
8 Physicians' (SAC, ¶¶ 1 and 2), and that Anthem underpaid the Physicians for  
9 emergency services allegedly rendered to its enrollees by failing to reimburse the  
10 Physicians at the "usual, customary and reasonable rates," i.e., its billed charges.  
11 (*see, e.g.*, SAC., ¶¶ 24, 27, 35, 37 and 38.) The SAC alleges state law claims for (1)  
12 recovery of payment for services rendered; (2) recovery on open book account (3)  
13 quantum meruit; (4) breach of implied contract; and (5) declaratory relief.

14 6. Unlike its allegations in the Complaint and the FAC, NAMDY alleges  
15 in the SAC for the first time in this action, that Anthem breached various patient  
16 enrollees' health benefit plans by failing to pay the full amount of contract benefits to  
17 the Physician, and, for the first time in this action, NAMDY expressly requests the  
18 Court to enforce the terms of the members' health plans. In that regard, the SAC  
19 alleges as follows:

20  
21 52. The Patient Protection and Affordable Care Act (PPACA)  
22 §1302 mandates that certain "Essential Health Benefits" must be  
23 covered by all health plans, and emergency services is one of them.  
24 PPACA § 1302(b)(1)(B). The law states that "a qualified health plan  
25 will not be treated as providing coverage for the essential health  
26 benefits... unless the plan provides that... (ii) if such services are  
27 provided out-of-network, the cost-sharing requirement (expressed as a  
28 copayment amount or coinsurance rate) is the same requirement that

1 would apply if such services were provided in-network." PPACA §  
2 3102(b)(4)(E). Prudent practices will note that the cost-sharing  
3 requirement imposed upon an enrollee for emergency services provided  
4 in-network is 0%. Thus, federal law requires the health plan to  
5 reimburse an out-of-network provider at 100% of billed charges for  
6 emergency services in order to ensure the same cost sharing requirement  
7 of 0% for out-of-network services.

8 53. It is therefore clear that the Defendants own Contract/Plan  
9 with the Patient requires that the Defendant must pay Physicians for  
10 Emergency Care at a rate equivalent to the Copayment or Coinsurance  
11 rate with the in Network rates within that Contract/Plan. **The Patient**  
12 **has had such Emergency care and the Physician who has provided**  
13 **that care has been denied payment in breach of that same said**  
14 **contract.**

15 54. In any event, the Defendant must be bound by the terms  
16 of the Contract/Plan that they have between them and the patient  
17 which covers scenarios where the Patient requires emergency care.  
18 It is understood and expected that the wording will include reference to  
19 Usual, Customary and Reasonable Rates in respect of the payment for  
20 those emergency services. In the event that usual, customary and  
21 reasonable rates is not specifically defined in the Contract/Plan then the  
22 Definition as described in the Health and Safety Code.

23 55. In the event that this Court does not accept that the  
24 Defendant is bound by the Knox-Keene Act, **and only the contract**  
25 **itself should apply, any restriction that would normally apply to the**  
26 **Physicians on balance billing the Patients for emergency services**  
27 **must therefore also not apply and the Court is asked to confirm this**  
28 **position.**

1 SAC, ¶¶52, 53, 54 and 55, emphasis added.

2 7. Like the Complaint and FAC, the SAC does not provide any details  
3 about the patient enrollees, the medical services allegedly rendered to them or the  
4 health plans in which they were enrolled. As a result, Anthem requested NAMDY  
5 to identify the members and claims at issue, so it could identify the claims and health  
6 plan(s) at issue in this case. The first time Anthem learned which of its enrollees  
7 were at issue in this case was on March 27, 2018, when it received from NAMDY's  
8 counsel a spreadsheet identifying the claims at issue. Among other things, these  
9 spreadsheets revealed for the first time the enrollees' names, and in some instances,  
10 their member identification number, which allowed Anthem to determine what type  
11 of coverage, applied for some, but not all, of the enrollees.

12 8. As discussed in more detail below, some of the enrollees at issue in this  
13 case are enrolled in health plans governed by ERISA. As the SAC makes clear,  
14 NAMDY seeks to enforce the terms of those ERISA-governed plans. SAC, ¶¶52,  
15 53, 54 and 55.

16 9. The presence of the ERISA-governed health plans provides a basis of  
17 removal in this case, but was not apparent on the face of the original Complaint, the  
18 FAC or the SAC, and did not become apparent until after Anthem received the  
19 spreadsheet of claims from NAMDY's counsel on March 27, 2018. Because this  
20 Notice of Removal is being filed within thirty days of that date, the first date on  
21 which Anthem could determine that ERISA preemption applied, Anthem is removing  
22 this case "within 30 days after receipt by [Anthem], through service or otherwise, of  
23 a copy of an amended pleading, motion, order or other paper from which it may be  
24 first ascertained that the case is one which is or has become removable." 28 U.S.C §  
25 1446(b)(3). Accordingly, this Notice of Removal is timely. *See Harris v. Bankers*  
26 *Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005).

27 10. The spreadsheet sent by NAMDY's counsel identifies, among other  
28 things, the names of the Physicians, the patients, the dates of service, and the

1 amounts paid and allegedly due on the claims. There are 28 claims identified in the  
2 spreadsheet. Of those, NAMDY provided member identification numbers for only  
3 eight of the claims. Consequently, Anthem was able to ascertain the relevant plan  
4 information as to only those eight claims. As for the remaining 20 claims, Anthem  
5 does not have sufficient information at this time to identify those patients in its  
6 records or to obtain information regarding the health benefit plans in which they may  
7 be enrolled.

8       11. Of the eight claims that Anthem was able to ascertain the relevant health  
9 plan information, Anthem was able to determine, for the first time in this matter, that  
10 four of those claims arise from health care services rendered to patients enrolled in  
11 ERISA-governed plans. Specifically, the spreadsheet shows that one such claim  
12 arises out of services that were rendered between May 3, 2017 and July 27, 2017 by  
13 NAMDY's assignee, Dr. Nissanoff, to an enrollee, whose initials are G.D. Another  
14 claim arises from services rendered by Dr. Nissanoff on June 18, 2016 to an enrollee,  
15 whose initials are J.P. At the time of those services, both G.D. and J.P. were enrolled  
16 in the Motion Picture Industry Health Plan, a self-funded, ERISA-governed  
17 employee health benefit plan for which Anthem serves as the claims administrator.  
18 (Declaration of Randy Hendel, ¶ 4.)

19       12. The spreadsheet further shows that a third claim at issue arises from  
20 services that were rendered by another assignee of NAMDY, Dr. Ghandehari, to an  
21 enrollee, whose initials are A.O., between April 17, 2017 and April 20, 2017. A.O.  
22 is enrolled in an Anthem Gold PPO 500/20%/4500 plan, a small group ERISA-  
23 governed employee health benefit plan. (Declaration of Randy Hendel, ¶5, Exhibit  
24 1.)

25       13. The spreadsheet also shows that a fourth claim at issue in this case  
26 arises from services rendered on December 23, 2017 by Dr. Smith, another assignee  
27 of NAMDY, to an enrollee, whose initials are N.M. N.M is enrolled in the Beyond  
28 Benefits Life Science Association Trust, an ERISA-governed employee health

1 benefit plan that is administered and insured by Anthem. (Declaration of Randy  
2 Hendel, ¶ 6, Exhibit 2.)

3 14. Anthem suspects that there will be more claims at issue arising from  
4 services rendered to patients who are enrolled in an ERISA-governed plan, if and  
5 when the patients named on the spreadsheet can be identified as Anthem enrollees  
6 and the corresponding health plans can be ascertained.

7 15. True and correct copies of the Summons, Complaint, First Amended  
8 Complaint and SAC, as well as all other process, pleadings, and orders served on  
9 Anthem are attached hereto and incorporated herein as Exhibit "A".

### 10 **GROUND FOR REMOVAL**

11 16. The State Court Action has been removed to this Court based upon  
12 federal question jurisdiction pursuant to 28 U.S.C. §§1331 and 1441(b), in that  
13 NAMDY's suit is one to recover damages stemming from the allegedly improper  
14 denial and/or administration of employee welfare benefits under employee benefit  
15 plans governed by ERISA and to enforce the terms of such employee benefit plans.  
16 This suit is one of a civil nature over which the United States has original  
17 jurisdiction.

18 17. The SAC alleges state law claims for (1) recovery of payment for  
19 services rendered; (2) recovery on open book account (3) quantum meruit; (4)  
20 breach of implied contract; and (5) declaratory relief. Such state law claims,  
21 however, are completely preempted by ERISA because NAMDY alleges that  
22 Anthem breached the terms of the enrollee's contracts by failing to fully reimburse  
23 the Physicians and expressly seeks to enforce the terms of the enrollees' plans (*see*  
24 SAC, ¶¶52, 53, 54 and 55). *See Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58  
25 (1987); *Aetna Health, Inc. v. Davila*, 542 U.S. 200, 210-214 (2004); *Pilot Life Ins.*  
26 *Co. v. Dedeaux*, 481 U.S. 41, 54 (1987). And because Plaintiffs are suing as the  
27 alleged assignees of the Physicians, who, on information and belief are the assignees  
28 of the ERISA plan beneficiaries, NAMDY's state law claims are completely

1 preempted by ERISA. See *Misic v. Bldg. Service Employees Health & Welfare*  
2 *Trust*, 789 F.2d 1374, 1378 (1986) (ERISA preempts the state claims of a provider  
3 suing as an assignee of a beneficiary's rights to benefits under an ERISA plan).

4 18. Additionally the Court may exercise supplemental jurisdiction over  
5 claims that are not preempted by ERISA, because they arise out of the same common  
6 nucleus of operative facts as the ERISA-preempted claims, i.e., that Anthem  
7 breached the enrollees' Plans by allegedly failing to fully reimburse the Physicians  
8 for the medical services at issue. See *Emrich v. Touche Ross & Co.*, 846 F.2d 1190,  
9 1195 (9th Cir. 1988) ("the doctrine of pendant jurisdiction . . . permits the district  
10 court to adjudicate factually related state claims in cases raising federal questions,  
11 whenever the federal law claims and state law claims derive from a common nucleus  
12 of operative fact.").

### 13 VENUE

14 19. Venue lies pursuant to 28 U.S.C. §1441, which provides for removal to  
15 the district court for the district and division embracing the place where the action is  
16 pending. The State Court Action was originally filed in the County of Ventura,  
17 which is within the Central District of California.

### 18 NOTICE

19 20. Pursuant to 28 U.S.C. §1446(d), Anthem will provide written notice of  
20 this removal to NAMDY and will file and serve such notice in the State Court  
21 Action.

### 22 CONSENT TO REMOVAL

23 21. There are no other named defendants in this case. Any other defendants  
24 are fictitiously named and need not be considered for the purpose of removal. 28  
25 U.S.C. §1441(a).

1 WHEREFORE, Anthem respectfully notifies this Court that, pursuant to 28  
2 U.S.C. §1441(c), the State Court Action referenced above has been removed from  
3 the Los Angeles County Superior Court to this Court.

4 Dated: April 18, 2018

VON BEHREN & HUNTER LLP  
William E. von Behren  
Carol B. Lewis

7  
8 By: /s/ William E. von Behren

William E. von Behren  
Attorneys for Defendant  
ANTHEM BLUE CROSS LIFE  
AND HEALTH INSURANCE  
COMPANY

**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2041 Rosecrans Avenue, Suite 367, El Segundo, CA 90245.

On April 18, 2018, I served the within document(s) described as:

**NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT**

on the interested parties in this action as stated below:

Alan Nesbit, Esq.  
NESBIT LAW GROUP  
8383 Wilshire Blvd.  
Suite 800  
Beverly Hills, CA 90211

☒ (BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by Federal Express, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in a sealed envelope or package designated by the express service carrier, addressed as set forth above, with fees for overnight delivery paid or provided for.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 18, 2018, at El Segundo, California.

Diane DeRosa  
(Type or print name)



(Signature)